FMLA AMENDMENTS: What Has Changed?

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I. INTRODUCTION

On November 17, 2008, the Department of Labor ("DOL") issued new Family and Medical Leave Act ("FMLA")[1] regulations that went into effect on January 16, 2009. These new regulations do two things: (1) revise the existing FMLA regulations to improve employee-employer communications about the FMLA; and (2) implement the active duty and military caregiver leave requirements that were included in the National Defense Authorization Act that became law in January 2008.

On October 28, 2009, signed the NDAA for the 2010 Fiscal Year which expanded the military leave entitlements for the "qualifying exigency" (or active duty) leave and military caregiver leave.

Among the many provisions and changes, this paper will discuss the most important provisions to you. Because the new regulations span over two hundred pages, however, not each change can be fully discussed. For more detailed information, consult the Federal Register, 29 CFR Part 825 or contact Ogletree Deakins.

II. REVISIONS TO EXISTING FMLA REGULATIONS

A. Definition of Serious Health Condition

The final regulations reorganize the various definitions of "serious health condition," although the DOL concluded that "no regulatory alternative" exists to define what constitutes a serious health condition.[2] While the DOL retains six definitions of "serious health condition," it modified "incapacity and treatment" as follows:

1. While the number of consecutive calendar days for incapacity remains at three, they must now be full calendar days.

2. For continuing treatment involving two or more doctor visits, those visits now must occur within thirty (30) days of the start of the incapacity.

3. The first visit with a health care provider (whether then followed by a successive visit within thirty (30) days or a regimen of treatment, i.e. antibiotics) must occur within seven (7) days of the start of the incapacity.[3]

Also, the "chronic condition" definition of serious health condition now requires periodic visits of at least twice a year for treatment of the incapacity.[4]

B. Notice Requirements

In its final regulations, the DOL consolidated into one section the notices an employer may be required to provide and into another section the notice that an employee must provide. An employer may be required to provide the following notices:

1. General notice;

2. Eligibility notice, which an employer now has five (5), instead of two (2), business days to provide once an employee may qualify for FMLA leave;

3. Rights and responsibilities notice; and

4. Designation notice.[5]

The DOL provided optional prototypes of these notices.[6] Also, the final regulations enable an employer to require an employee to comply with its normal and customary notice and procedural requirements for requesting FMLA leave, unless there are unusual circumstances.[7] These notice requirements are discussed more fully in Section II.E below.

C. Intermittent and Reduced Leave

1. Definitions

Intermittent leave is leave of less than 12 weeks taken in separate blocks of time due to a single qualifying reason.[8] A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per work week or hours per work day. Where leave is taken because of the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.[9] There is no limit on the size of an increment of leave that can be taken when an employee takes intermittent leave or leave on a reduced leave schedule that is medically necessary, but an employer may restrict the leave to the minimum period of time that the employer's payroll system uses to account for absences or use of leave.[10] The new FMLA regulations make clear that employees who take intermittent FMLA leave have a statutory obligation to make a "reasonable effort" to schedule such leave so as not to unduly disrupt the employer's operations.[11]

2. Calculation of Amount of Leave Used Where an Employee Takes Intermittent Leave or A Reduced Leave Schedule

Only the amount of time actually taken off work can be counted toward the twelve weeks of leave to which an employee is entitled. If an employee normally works five days a week and takes off one day per week on a reduced leave schedule, that employee would use only one-fifth of a week of FMLA leave towards the total 12-week entitlement.[12] Leave used by a part-time employee on reduced leave schedule is calculated on a pro rata basis. For example, an employee who works thirty hours per week goes on a reduced leave schedule of 20 hours per week. The employee's regular schedule is reduced by one-third, so the employee is taking one-third of a week leave each week and would be entitled to maintain the reduced schedule for 36 weeks.[13]

3. Ten Rules of Intermittent Leaves

a. Put Your Intermittent Leave Policy in Writing. Not only is this required, it is the first place the DOL or a court will look.

b. Require Certification of Every Employee. Minimize risk of a disparate treatment claim.

c. **Consider Getting A Second And Third Opinion.** This is an employer right – take advantage of it, at the right time (see below).

d. **Require Recertification and Require Annual Renewals/New Certifications.** Recertification is limited to 30 days or duration of leave (unless extended), circumstances change or fraud is suspected. Annual renewals/new certifications are allowed every 12 months, for each serious health condition.

e. **Require Specific Information From Doctor On Certification Form.** Duration, number and interval between treatments, dates, and recovery periods can be requested.

f. **Remember to Run Sick/Vacation/Personal/PTO Time Concurrently.** If paid time available and state law permits, use for intermittent or partial day absences.

g. **Require All Employees to Consult With You For Scheduled Periods of Leave.** If leave can be scheduled, scheduling should be required.

h. **Transfer Employees on Intermittent Leave as Necessary and as Allowed.** Be careful, you cannot transfer an employee unless planned medical treatment has caused need for intermittent leave or employer has voluntarily granted such leave for birth/adoption of a child.

i. **In Many States, No Need To Give Intermittent Leave For Birth or Adoption.**

j. **Investigate Suspicions of Fraud and Abuse.** Lying is not protected; hire an investigator where you have a legitimate belief of abuse.

D. Certification/Documentation

An employer should always require medical certification, such as the DOL form,[14] from an employee seeking FMLA leave. Within 15 calendar days of an employer's request, an employee must provide medical certification, unless doing so is not practicable under the particular circumstances.[15] If certification is requested, the employer must advise the employee of the consequences of the employee's failure to provide it.

1. Challenging Medical Certification – Second and Third Opinions

If an employee submits a complete certification signed by a health care provider, the employer may not request any further information from the employee's health care provider; however, under the final regulations an employer's manager or human resource professional can contact an employee's health care provider to clarify or authenticate a certification, though the employee's immediate supervisor may not.[16]

If an employer wishes to challenge the medical certification, now is the time to do it. Other

than an annual renewal of a serious health condition, this is the only other time a second or third opinion may be requested.[17] If the opinions of the two health care providers conflict, the employer may require that the employee obtain certification from a third health care provider at the employer's expense. The third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee.[18]

2. Consequences of Employer's Failure to Address Inadequate Medical Certifications

a. Incomplete Certifications

If a certification is incomplete or insufficient, the final regulations require the employer to give the employee written notice of the additional information needed and allow the employee seven (7) days to cure the deficiency.[19] This provision pertains to medical certifications that fail to satisfy the objective requirements of the regulations. An employer's failure to notify the employee of a deficiency in medical certification may prevent the employer from later denying that the employee's leave was not due to a serious health condition.

b. Annual Certification/Renewal

In addition to recertification requests (discussed above), a new medical certification may be required at the beginning of each leave year. (Each separate serious health condition has its own leave year.)[20] Unlike a recertification, an annual certification (or "renewal," for purposes of distinguishing the confusingly similar terms "annual certification" from a "recertification") allows an employer to seek second and third opinions.

c. Annual Recertification

The final regulations clarify that an employer can request a recertification every leave year for any serious health condition lasting longer than one year.[21]

3. Fitness for Duty Certification

As a condition of reinstatement, an employer may request a fitness-for-duty certification. Pursuant to the new revisions, a fitness-for-duty certification may address the specifics of any employee's ability to perform the essential functions of the job.[22] Such a request may be made pursuant to a uniformly applied policy or practice that requires employees who take leave to obtain and present certification from a health care provider that the employee is able to resume work. A fitness-for-duty certification itself need only be a simple statement that the employee is able to return to work.

4. Consequences of Failure to Satisfy the Medical Certification Requirement

When an employee fails to provide a requested medical certification before a leave is to begin, the employee may be denied leave until the certification is provided. Where an employee is to provide certification after a leave has begun, such as where the need for leave is unforeseeable, if the employee fails to provide the certification, the employer may deny the employee continuation of the leave, and require that the employee return to work. If an employee is required to provide a fitness-for-duty certification and fails to do so, the employer may deny reinstatement until the

employee does so.

E. Notification Requirements

In its final regulations, the DOL consolidated into one section the notices an employer may be required to provide and into another section the notice that an employee must provide. An employee must provide at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable due to an expected birth, placement for adoption or foster care or a planned medical treatment or serious health condition. The notice can be verbal, and, although the employee need not expressly mention the FMLA, the notice must be sufficient to make the employer aware that the employee needs FMLA-qualifying leave. If the need is not foreseeable or arises in an emergency, notice must be given as soon as practicable. If the employer has a rule automatically terminating an employee's employment upon a failure to report for work, that rule could not validly operate where an employee was not able to immediately contact the employer due to an emergency but ultimately reports that he or she must take time off for family leave and the employee requests the leave as soon as practicable after the need for leave arises.

1. Consequences of Failure to Give Sufficient Notice of Need for Leave

If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse, the employer may deny the taking of the leave until 30 days after the date the employee does provide notice. For an employer to do so, it must be clear that the employee was notified of the notice requirements, which he failed to meet. An employer may not deny leave where the need for leave was not foreseeable and the employee gives as much notice as is practicable. Courts are often lenient with employees who argue they provided notice as soon as practicable.

2. What if the Employee Does Not Expressly Request FMLA Leave?

It is the employer's burden to determine the purpose for which an employee seeks time off work, to characterize the time off work as FMLA leave if appropriate, and to comply in all respects with the FMLA. Where the employer does not have sufficient information to determine if a request for time off work qualifies as FMLA leave, the employer should inquire further to make that determination. Time off work can be designated by the employer as FMLA leave only before the leave begins, or while the employee is off work. It generally cannot be so designated after the employee returns to work.

3. Employer Notice Requirements

The FMLA imposes some very specific notification requirements on employers, and the new regulations change the notice requirements. The failure to comply with these notification requirements can deprive employers of defenses or preclude them from denying leave where leave might otherwise have been deniable. The DOL provided optional prototypes of these revised notices on its website: http://www.dol.gov/esa/whd/fmla/finalrule.htm. Also, the final regulations enable an employer to require an employee to comply with its normal and customary notice and procedural requirements for requesting FMLA leave, unless there are unusual circumstances.[23] The revised notice requirements are discussed in more detail below.

a. Posting Requirement

Every employer subject to the FMLA is required to post and keep posted on its premises in conspicuous places the general DOL notice explaining the FMLA's provisions and providing information concerning procedures for filing complaints for violations of the FMLA with the DOL. An employer who fails to post the required notice cannot take any adverse action against an employee, including denying FMLA leave, for failing to furnish the employer with advance notice of the need to take leave. When an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the information required by the DOL poster in a language in which the employees are literate. A copy of the DOL prototype revised FMLA poster may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

b. Policy Statement

If an employer has a personnel handbook or any other written guidance to employees concerning employee benefits or leave rights, information concerning the employees' right to FMLA leave must be included. Note: In lieu of drafting a policy, employers are free to use or incorporate any of the various DOL materials explaining the FMLA. If an employer does not have a written policy or handbook describing employee benefits and leave provisions, it must still provide written guidance to employees concerning their FMLA rights and obligations.

c. Eligibility Notice

When an employee requests FMLA leave, the DOL regulations require that the employer provide the employee with written notice (in a language in which the employee is literate) detailing the specific expectations and obligations of the employee and explaining any consequence of a failure to meet these obligations. Under the new regulations, an employer has five (5) business days to provide this "eligibility" notice, rather than two (2) days under the old rule.[24] Under the new rules, an eligibility notice must state:

- Whether the employee is eligible for FMLA leave;
- If the employee is not eligible for FMLA, then the notice must include at least one reason why the employee is not eligible, including, as applicable, the number of months the employee has been employed by the employer, the number of hours of service worked for the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed by that employer within 75 miles of that worksite.[25]

d. Rights and Responsibilities Notice

The final regulations now require than an employer issue a "rights and responsibilities" notice to an employee whenever it is required to issue an eligibility notice.[26] This rights and responsibilities notice must state:

- That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualified and the applicable 12 month period for FMLA entitlement;

- Any requirements for the employee to furnish certification of a serious health

condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so;

- The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;

- Any requirement for the employee to make premium payments to maintain health benefits and the arrangements for making such payments and the possible consequences of failure to make such payments on a timely basis;

- The employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;

- The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and

- The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.[27]

The eligibility notice and rights and responsibilities notice can be distributed to an employee in one document. The DOL prototype combination eligibility and rights and responsibilities notice (Form WH-381) may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

e. Designation Notice

Under the new regulations, in all circumstances an employer must designate whether leave is qualified under the FMLA, and must provide notice of this designation to the employee. When the employer has enough information to determine whether the leave qualifies under the FMLA, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five (5) business days.

If the employer determines that the leave will not be designated as qualifying under the FMLA, the employer must notify the employee of that determination. If the employer requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer must inform the employee of this designation at the time of designating the FMLA leave. If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must include a statement to that affect in the designation notice, and must include a list of the essential functions of that employee's position.[28] The DOL prototype designation notice (Form WH-382) may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

F. Other Miscellaneous Provisions

1. Penalty Provisions

The final regulations implement revisions to conform the regulations to the Supreme Court's decision in *Ragsdale v. Wolverine Worldwide, Inc*. In that case, the Court ruled that certain penalty provisions for failing to designate leave as FMLA leave were invalid. Other appellate courts have struck down other regulatory provisions addressed in these final regulations.[29]

2. Bonuses and Attendance Awards

The regulations permit the disqualification of an employee from a perfect attendance award or other bonus because they are absent due to FMLA as long as such awards or bonuses are not paid to employees on leave status for reasons that do not qualify as FMLA leave.[30]

3. Waiver of FMLA Claims

The final regulations reiterate the DOL's longstanding interpretation that an employee can enter into a settlement agreement that waives or releases FMLA claims based on past employer practices without DOL supervision or participation. However, the regulations clarify that an employee cannot waive or settle their *prospective* (meaning future) rights under the FMLA.[31]

4. Substituting Paid Leave For Unpaid Leave

While FMLA leave is unpaid leave, the statute allows for the substitution of paid leave. The final regulations clarify that an employer may require compliance with the procedural requirements of a paid leave benefit when substituting paid leave of any type for unpaid FMLA.[32]

5. Call-In Procedures For Intermittent Leave

The final regulations require employees utilizing intermittent leave to follow the standard call-in procedures established by the employer "absent unusual circumstances."[33]

III. MILITARY FAMILY LEAVE ENTITLEMENTS

The more significant aspects of the DOL's regulations are its implementation of the active duty and military caregiver FMLA leave provisions. The DOL consulted the Departments of Defense (DOD) and Veterans Affairs (VA), and relied on their comments in formulating the final regulations for these two very important military leave entitlements.

The DOL incorporated the regulations implementing the military family leave provisions into the existing framework of the FMLA regulations. While language is interspersed in multiple, various regulatory sections of the final regulations to address these entitlements, the DOL created four new regulatory sections devoted exclusively to these new entitlements and the special provisions governing them. In particular, 29 CFR Sections 825.126 and 825.309 address the qualifying exigency aspect of active duty FMLA leave while 29 CFR Sections 825.127 and 825.310 discuss the military caregiver FMLA leave.

A. Active Duty Leave

The DOL's final regulations identify eight circumstances that constitute a qualifying exigency for which an eligible employee is entitled to FMLA leave while that employee's spouse, son, daughter or parent is on active duty or call to active duty status.[34] Briefly, these exigencies are:

1. **Short-Notice Deployment.** Where the notification of a call or order to active duty is seven days or less, leave can be taken to address any issues.

2. **Military Events and Related Activities.** This is to attend official military events or family assistance programs or briefings.

3. **Childcare and School Activities.** An eligible employee can take leave for a variety of childcare and school-related reasons for a child, legal ward or stepchild of a covered military member.

4. **Financial and Legal Arrangements.** Leave is available to an eligible employee to make or update financial or legal affairs to address the absence of a covered military member.

5. **Counseling.** This is to attend non-health care provided counseling for the employee, military member or child, ward or stepchild of the military member.

6. **Rest and Recuperation.** An eligible employee may take up to five (5) days to spend time with a covered military member who is on short-term rest leave.

7. **Post-Deployment Activities.** For a period of 90 days after a covered military member's active duty terminates, an eligible employee may take leave to attend ceremonies, reintegration briefings or other programs.

8. **Additional Activities**. This category covers leave for other events where the employer and employee agree on the time and duration of the leave.

In addition, the regulations define a number of terms that apply specifically to the qualifying exigency leave, including covered military member and child on active duty. On October 28, 2009, President Obama extended Active Duty Leave to employees with a spouse, son, daughter or parent who is a member of any branch of the military and eliminated the requirement that the call to active duty be in support of a contingency operation.

The regulations define the certification for qualifying exigency leave that an employer may require an employee to produce. This includes a copy of the covered military member's active duty orders, as well as additional information such as a signed statement of the employer. The DOL has provided a prototype form for this specialized certification.[35] The prototype certification form (Form WH-384) may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm. Finally, the regulations clarify that an employer can contact a third party to verify an employee's appointment.[36]

B. Servicemember Family Leave/Caregiver Leave

Servicemember family leave is available for a family member (spouse, son, daughter, parent, or "next of kin") of a covered servicemember who is needed to care for such servicemember. Servicemember family leave is available for up to 26 weeks – a substantially longer period than the 12 work week entitlement for other forms of FMLA leave.[37] Employers do not have the option of using the typical FMLA calendar-year method for military leave – the 12-month period begins when the employee begins using the caregiver leave. A **covered servicemember** is a member of the Armed Forces, including a member of the National Guard or Reserves, or a veteran who receives treatment within 5 years of his/her military service, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.[38] This definition contains two terms defined elsewhere in the statute:

1. **"Outpatient Status"**: "the status of a member of the Armed Forces assigned to – (A) a military medical treatment facility as an outpatient; or (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients;"[39] and

2. **"Serious Injury or Illness"**: "an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating."[40]

The DOL has provided a prototype certification form for caregiver leave (Form WH-385). The prototype form may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

D. Ambiguities and Areas of Concern

From a compliance standpoint, perhaps the most troublesome definition is the last one noted above – "serious injury or illness." Unlike the normal FMLA **"serious health condition"** definition that is ascertainable by reference to medical evidence, a **"serious injury or illness"** to a covered servicemember must be evaluated in light of "the duties of the member's office, grade, rank, or rating." Most employers are in no position to make an informed decision as to whether a particular servicemember's injury or illness prevents him or her from performing military duties, much less the nature of military duties associated with a particular office, grade, rank or rating. Accordingly, we recommend a conservative approach to challenging leave requests on basis that a condition is not a "serious injury or illness," with substantial – if not complete – deference being given to any evaluation performed by a military physician.

Additional confusion is created by the set of family members covered by the servicemember family leave provision. How do you define "son" or "daughter?" Who are "next of kin?" Until these questions are completely resolved in further DOL regulations, employers should take a conservative approach and grant leave requests if the employee establishes that he or she is at least as near to the servicemember as other family members.

Further ambiguity exists with respect to the relationship between the 26-week servicemember family leave entitlement and the 12-week entitlement for all other types of FMLA leave. The text of the statute suggests that the two periods are cumulative but not interchangeable. That is, an

employee may not take both the 12 weeks for family or medical leave and the 26 weeks for servicemember family leave in the same 12-month period. Therefore, the maximum leave available in a single 12-month period is 12 weeks for family and/or medical leave and 26 weeks for any combination of leave, of which no more than 12 weeks may be for non-servicemember family leave.

D. Compliance Guidelines

Although each leave request must be evaluated according to relevant facts and circumstances, and may require separate consultation with labor counsel, general guidelines for complying with the new servicemember family leave requirements are as follows:

- Recognize the availability of leave extending up to 26 weeks, rather than the 12-week period applicable to other types of FMLA leave;

- Require verification that the employee is a spouse, son, daughter, parent or closest blood relative of a member of the Armed Forces;

- With respect to an employee requesting leave to care for an injured parent, evaluate whether the employee is also the parent's "next of kin" or, in rare cases, require verification that the requesting employee-child is either under age 18 or over age 18 and incapable of self-care;

- Require verification that the servicemember is "undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list";

- Require verification that the servicemember's injury or illness was incurred in the line of duty; and

- To the extent possible, require medical certification that the injury or illness renders the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

Fortunately, from a compliance perspective, the collateral rules applicable to servicemember family leave are in most relevant respects the same as those applicable to leave taken to care for civilian family members. Notice requirements, intermittent leave, substitution of paid for unpaid leave, and similar matters are treated in a manner consistent with civilian family member care leave.

FOOTNOTES

[1] The Family and Medical Leave Act of 1993; Final Rule, 73 Fed. Reg. 67,934, 67946 (Nov. 17, 2008). These regulations relate to federal law only. Many states have either their own family leave acts or "Mini-FMLA's" which may provide different or additional protections to the employee.

[2] 73 Fed. Reg. at 67,946.

[3] 73 Fed. Reg. at 68,079 (to be codified at 29 C.F.R. pt. 825.800).

[4] *Id*.

[5] 73 Fed. Reg. at 68,096 (to be codified at 29 C.F.R. pt. 825.300).

[6] Copies of the prototype employer notice forms may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

[7] 73 Fed. Reg. at 68,098 (to be codified at 29 C.F.R. pt. 825.302).

[8] 29 C.F.R. pt. 825.203(a), 825.800.

[9] 29 C.F.R. pt. 825.203(a).

[10] 29 C.F.R. pt. 825.203(d).

[11] 73 Fed. Reg. at 67,974, 68,088 (to be codified at 29 C.F.R. pt. 825.203).

[12] 29 C.F.R. pt. 825.205.

[13] 29 C.F.R. pt. 825.205(b).

[14] The DOL certification forms (Form WH-380-E and WH-380-F) may be found at http://www.dol.gov/esa/whd/fmla/finalrule.htm.

[15] 29 C.F.R. pt. 825.305(b).

[16] 73 Fed. Reg. at 68,102 (to be codified at 29 C.F.R. pt. 825.307(a)).

[17] 29 C.F.R. pt. 825.308(e), 825.309

[18] 29 C.F.R. pt. 825.307(c).

[19] 73 Fed. Reg. at 68,100 (to be codified at 29 C.F.R. pt. 825.305(c)).

[20] *See* Wage and Hour Opinion Letter FMLA 2005-2-A (Sept. 14, 2005).

[21] 73 Fed. Reg. at 68,101 (to be codified at 29 C.F.R. pt. 825.305(e)).

[22] 73 Fed. Reg. at 68,105 (to be codified at 29 C.F.R. § 825.312(b)).

[23] 73 Fed. Reg. at 68,098 (to be codified at 29 C.F.R. pt. 825.302).

[24] 73 Fed. Reg. at 68,096 (to be codified at 29 C.F.R. pt. 825.300(b)).

[25] 73 Fed. Reg. at 68096 (to be codified at 29 C.F.R. pt. 825.300(b)(2).

[26] 73 Fed. Reg. at 68,097 (to be codified at 29 C.F.R. pt. 825.300(c)).

[27] 73 Fed. Reg. at 68,097 (to be codified at 29 C.F.R. pt. 825.300(c)(i) to (vii)). The notice may contain other information as well, including whether the employer will require reports of the employee's status and intent to return to work.

[28] 73 Fed. Reg. at 68,097 (to be codified at 29 C.F.R. pt. 825.300(d)).

[29] 73 Fed. Reg. at 67,940, 68,077-78 (to be codified at 29 C.F.R. pt. 825.110).

[30] 73 Fed. Reg. at 67,093 (to be codified at 29 C.F.R. pt. 825.215(c)(2)).

[31] 73 Fed. Reg. at 68,095 (to be codified at 29 C.F.R. pt. 825.220(d)).

[32] 73 Fed. Reg. at 68,089 (to be codified at 29 C.F.R. pt. 825.207(a)).

[33] 73 Fed. Reg. at 67,099 (to be codified at 29 C.F.R. pt. 825.302(d)).

[34] 73 Fed. Reg. at 68,086 (to be codified at 29 C.F.R. pt. 825.126).

[35] 73 Fed. Reg. at 68,103 (to be codified at 29 C.F.R. pt. 825.309).

[36] 73 Fed. Reg. at 68,103 (to be codified at 29 C.F.R. pt. 825.309(d)).

[37] 73 Fed. Reg. at 68,086 (to be codified at 29 C.F.R. pt. 825.200(f)).

[38] 73 Fed. Reg. at 68.112 (to be codified at 29 C.F.R. pt. 825.800).

[39] 73 Fed. Reg. at 68,114 (to be codified at 29 C.F.R. pt. 825.800).

[40] *Id*.